

FCC MAIL SECTION

Before the
 APR 8 3 22 PM '93 Federal Communications Commission
 Washington, D.C. 20554

DISPATCHED BY
 MM Docket No. 93-56 ✓

In re Applications of

C. DEVINE MEDIA, INC. File No. BRH-900604YE

For Renewal of License of
 Station KBER-FM
 Ogden, Utah

STREET STRYDER File No. BRH-900601A3

For Renewal of License of
 Station KQOL-FM
 Spanish Fork, Utah

HEARING DESIGNATION ORDER AND NOTICE OF FORFEITURE

Adopted: March 9, 1993;

Released: April 8, 1993

By the Commission:

1. The Commission has before it for consideration: (a) the license renewal applications of the captioned licensees, C. Devine Media, Inc. (Devine), for Radio Station KBER-

¹ Section 73.3555 of the Commission's Rules governing multiple ownership of radio stations has recently been amended. See *In re Revision of Radio Rules and Practices*, 7 FCC Rcd 6387 (September 4, 1992). However, the rule in effect at the time of the transaction in question provided:

Section 73.3555(a) of the Commission's Rules provides: No license for an... FM broadcast station shall be granted to any party ... if such party directly or indirectly owns, operates, or controls one or more broadcast stations in the same service and the grant of the license will result in:

....

(2) Any overlap of the predicted 3.16 mv/M contours of the predicted 3.16 mv/M contours of the existing and proposed FM stations, computed in accordance with Section 73.313.

² Section 73.3540 of the Commission's Rules provides:

(a) Prior consent of the FCC must be obtained for a voluntary assignment or transfer of control.

³ Section 310(d) of the Communications Act provides:

No... station license, or any rights thereunder shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily... except upon application to the

FM, Ogden, Utah, and Street Stryder (Stryder), for Radio Station KQOL-FM, Spanish Fork, Utah; and (b) the results of its investigation of stations KBER-FM and KQOL-FM.

2. Information supplied by the licensees on applications submitted to the Commission and in response to Commission letters of inquiry, a Petition for Reconsideration of a grant of an application for the assignment of the license of Station KQOL-FM from Devine to Stryder, and an independent investigation by Commission staff, indicate that Devine may have engaged in a sham assignment of the license of KQOL-FM to Stryder to circumvent the Commission's multiple ownership rules set forth in Section 73.3555(a)(2) of the Commission's Rules.¹ It also appears that Stryder may have engaged in an unauthorized assignment of KQOL's license in violation of Section 73.3540 of the Commission's Rules² and Section 310 of the Communications Act.³ Furthermore, the responses of both licensees to Commission inquiries concerning this assignment appear to have been false or deceptive, in violation of Sections 73.1015 and 1.17 of the Commission's Rules⁴ and raise substantial and material questions as to whether Devine and Stryder possess the requisite qualifications to warrant granting the applications for renewal of the licenses of KBER-FM and KQOL-FM.⁵

3. Accordingly, IT IS ORDERED, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, C. Devine Media, Inc., and Street Stryder, ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

(a) To determine whether Devine and Stryder violated Section 73.3555(a)(2) of the Commission's Rules by engaging in a sham assignment of the license of Station KQOL-FM, Spanish Fork, Utah, from Devine to Stryder;

Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.

⁴ Sections 73.1015 and 1.17 of the Commission's Rules provide:

... No applicant, permittee or licensee shall in any response to Commission correspondence or inquiry or in any application, pleading, report or any other written statement submitted to the Commission, make any misrepresentation or willful material omission bearing on any matter within the jurisdiction of the Commission.

⁵ Two applications for assignment of station licenses currently pending before the Commission will be deferred pending the outcome of this proceeding. One is for the assignment of Station KZHT-FM, Provo, Utah, from Golden Bear-1 Broadcasting, Inc. to Chestnut II, Inc., whose principals are also the principals of C. Devine Media, Inc. (BALH-921118HL). The other is an application seeking consent to assign the license of Station KQOL-FM, Spanish Fork, Utah, from Street Stryder to Sullivan Media Corporation. (BALH-920409GK). Action on any other subsequently proposed assignments involving the acquisition of an interest in a station by any of the principals of C. Devine Media, Inc., or by Street Stryder, will be deferred pending the outcome of this proceeding.

(b) To determine whether Stryder violated Section 73.3540 of the Commission's Rules and Section 310(d) of the Communications Act by engaging in an unauthorized assignment of the license of Station KQOL-FM to Steve Evans, the brother-in-law of Chris Devine, one of the principals of C. Devine Media, Inc.;

(c) To determine whether Devine and Stryder violated Sections 73.1015 and 1.17 of the Commission's Rules by making misrepresentations to the Commission concerning the foregoing;

(d) To determine, in light of the evidence adduced under the foregoing issues, whether Devine and Stryder possess the requisite qualifications to warrant the grant of the applications for renewal of the licenses of Stations KBER-FM and KQOL-FM.

4. IT IS FURTHER ORDERED. That the Chief, Mass Media Bureau, is directed to serve upon Devine and Stryder within thirty (30) days of the release of this Order, a Bill of Particulars with respect to all the foregoing issues.

5. IT IS FURTHER ORDERED. That pursuant to Section 309(e) of the Communications Act of 1934, as amended, both the burden of proceeding with the evidence and the burden of proof shall be upon the applicants as to all issues specified herein.

6. IT IS FURTHER ORDERED. That to avail itself of the opportunity to be heard, each applicant, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, shall, within twenty (20) days of the mailing of this order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for hearing and present evidence on the issues specified in this order.

7. IT IS FURTHER ORDERED. That if it is determined that the hearing record does not warrant an Order denying the applications for renewal of the licenses of Devine and Stryder for Radio Stations KBER-FM and KQOL-FM, it shall also be determined if Devine and Stryder have willfully or repeatedly violated Section 73.3555(a)(2) of the Commission's Rules (multiple ownership), Sections 73.3540 of the Commission's Rules and Section 310(d) of the Communications Act (unauthorized assignment), and Sections 73.1015 and 1.17 of the Commission's Rules (candor in communications with the Commission). If so, it shall also be determined whether Orders for Forfeiture shall be issued pursuant to Section 503(b) of the Communications Act of 1934, as amended, in an amount up to \$250,000 each for the willful or repeated violation of Sections 73.3555(a)(2), 73.3540, 73.1015, and 1.17 of the Commission's Rules, and Section 310(d) of the Communications Act.

8. IT IS FURTHER ORDERED. That, in connection with the possible forfeiture liability noted above, this document constitutes notice pursuant to Section 503(b)(3) of the Communications Act of 1934, as amended. The Commission has determined that, in every case designated for hearing involving revocation or denial of assignment, transfer, or renewal of license for alleged violations which also come within the purview of Section 503(b) of the Communications Act of 1934, as amended, it shall, as a matter of course, include this forfeiture notice so as to maintain the fullest possible flexibility of action. Since the procedure is thus a routine or standard one, we stress that the inclusion of this notice is not to be taken as in any way indicating

what the initial or final disposition of the case should be; that judgment is, of course, to be made on the facts of each case.

9. IT IS FURTHER ORDERED. That the applicants herein, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, shall give notice of the hearing within the time and in the manner prescribed in such Rule and shall advise the Commission thereof as required by Section 73.3594(g) of the Rules.

10. IT IS FURTHER ORDERED. That the Secretary of the Commission send a copy of this Order by *Certified Mail-Return Receipt Requested* to:

Chris Devine
c/o C. Devine Media, Inc.
Licensee of Station KBER-FM, Ogden, Utah
130 East Dempster
Evanston, Illinois 60604

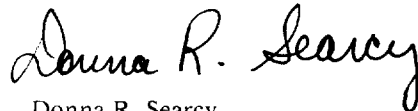
Street Stryder
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